



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: JUNE 26, 2023

IN THE MATTER OF:

Appeal Board No. 628692

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board No. 628691, the claimant appeals from decision of the Administrative Law Judge filed March 12, 2023, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective March 8, 2021, on the basis that the claimant was not available for employment.

In Appeal Board No. 628692, the claimant appeals from decision of the Administrative Law Judge filed March 12, 2023, insofar as it sustained the initial determination charging the claimant with an overpayment of \$13,104.00 in benefits recoverable pursuant to Labor Law § 597 (4); and charging the

claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board No. 628693, the claimant appeals from decision of the Administrative Law Judge filed March 12, 2023, insofar as it sustained the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$3090.60 on the basis that the claimant made willful misrepresentations to obtain benefits

A hearing was held at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

In Appeal Board No. 628691, no errors of fact or law have been made concerning the issue in that case, availability for employment. The findings of fact and

the opinion of the Administrative Law Judge Appeal Board No. 628691 are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

As to Appeal Board Nos. 628692 and 628693, the Board makes the following

**FINDINGS OF FACT:** After the claimant had filed her claim for Unemployment Insurance benefits on May 28, 2020, the claimant certified weekly for benefits. The claimant knew that in order to be eligible for benefits week to week, she had to be ready, willing and able to work. On March 28, 2021, while certifying for the week ending March 28, 2021, the claimant was asked how many days she was not ready, willing, and able to work that week. The claimant reported that there were zero days that week that she was unavailable for work, even though she was not available for work because the claimant lacked childcare for her infant child and had to provide care for her infant child. No one had told the claimant to answer the certification question untruthfully. The claimant received the benefits in issue, \$13,104.00 in regular Unemployment Insurance benefits, and Federal Pandemic Unemployment Compensation of \$7,500.00.

**OPINION:** The credible evidence establishes that the claimant received the benefits in issue. As we have held in Appeal Board No. 628691 that the claimant is ineligible to receive benefits effective March 8, 2021, she was overpaid the regular and FPUC benefits.

Under the provisions of the CARES Act, overpaid FPUC benefits are recoverable when they are paid in error, regardless of fault on the part of the claimant. The FPUC benefits were paid to the claimant in error, as she was not available for employment during the period in issue. Accordingly, the overpaid FPUC benefits are recoverable.

However, overpaid regular unemployment benefits are recoverable when a claimant has made factually false statements resulting in the overpayment of benefits. In this case, the evidence establishes that when the claimant certified for the week ending March 28, 2021, she falsely stated that there were zero days that she was not available for employment. As the evidence establishes that the claimant was not available for work on each day of that week, the claimant made factually false statements when certifying for benefits for the week ending March 28, 2021. Accordingly, the regular benefits that were paid to the claimant for that week are also recoverable. Regarding

the remainder of the regular benefits, as the initial determination regarding the recoverable overpayment provided only that the claimant falsely certified on one day, March 28, 2021, for benefits for the week ending March 28, 2021, only the regular benefits received for the week ending March 28, 2021 are recoverable. The balance is non-recoverable. The amount of recoverable regular benefits is referred back to the Department of Labor for recalculation in accordance with this decision.

As the claimant knew that she was not available for work on any day in the week ending March 28, 2021, the claimant's certification also constitutes a willful misrepresentation and the eight effective day penalty was properly imposed. A civil penalty should also be imposed. However, as the amount of recoverable regular benefits is referred back to the Department of Labor for recalculation in accordance with this decision, the amount of the civil penalty is also referred back to the Department of Labor for recalculation.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 628691, the initial determination, holding the claimant ineligible to receive benefits, effective March 8, 2021, on the basis that the claimant was not available for employment, is sustained.

In Appeal Board No. 628692, the initial determination, charging the claimant with an overpayment of \$13,104.00 in benefits recoverable pursuant to Labor Law § 597 (4), is modified to charge the claimant for the benefits received

for the week ending March 28, only, and, as so modified, is sustained. The amount of recoverable regular benefits is referred to the Department of Labor for recalculation in accordance with this decision.

In Appeal Board No. 628692, the initial determination, charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is sustained.

In Appeal Board No. 628693, the initial determination, reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$3,090.60 on the basis that the claimant made a willful misrepresentation to obtain benefits, is modified to charge a civil penalty in

accordance with this decision, and, as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

The amounts of the recoverable regular benefits and the civil penalty are referred to the Department of Labor for recalculation in accordance with this decision.

RANDALL T. DOUGLAS, MEMBER